

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

| | | |
|---------------------------|---|-----------------------|
| MAYOR AND CITY COUNCIL |) | |
| OF BALTIMORE CITY, A |) | |
| MUNICIPAL CORPORATION, et |) | |
| al., |) | CIVIL ACTION FILE NO. |
| |) | 1:16-cv-03486-ELH |
| Plaintiffs / Counterclaim |) | |
| Defendants, |) | |
| |) | |
| v. |) | |
| |) | |
| BROOKE ALLEN, et al., |) | |
| |) | |
| Defendants / Counterclaim |) | |
| Plaintiffs. |) | |

**DEFENDANTS' MOTION TO AMEND ANSWER, DEFENSES,
AND COUNTERCLAIMS AND INCORPORATED
MEMORANDUM IN SUPPORT**

Plaintiffs filed a Motion to Strike Defendants' Affirmative Defenses.

Contemporaneously herewith, Defendants have filed a response in opposition to Plaintiffs' motion to strike. As is set forth in Defendants' response, the motion to strike should be denied because it is dilatory and because it has no merit.

Plaintiffs also filed a Motion to Dismiss Defendants' Counterclaims.

Contemporaneously herewith, Defendants have filed a response in opposition to Plaintiffs' motion to dismiss. As set forth in Defendants' response, the motion to dismiss should be denied because Defendants have adequately stated claims for relief against Plaintiffs.

However, to further address the Motion to Strike and Motion to Dismiss, Defendants move the Court to grant them leave to file the Amended Answer, Defenses, and Counterclaims attached hereto as Exhibit “A”. While Defendants believe that they adequately plead facts in support of their defenses in their original Answer, Defenses, and Counterclaims, the Amended Answer, Defenses, and Counterclaims includes facts stated in the same paragraphs as the defenses themselves in order to provide a roadmap to Plaintiffs. Further, while Defendants believe that they adequately plead facts supporting their claims in their original Answer, Defenses, and Counterclaims, the Amended Answer, Defenses, and Counterclaims sets forth additional facts that will provide Plaintiffs with additional information related to Defendants’ organization and offering of the LIGHT CITY festival and related LIGHTCITYU innovation conferences. Under the circumstances, leave to amend should be granted to Defendants. See Haley Paint Co. v. E.I. Du Pont De Nemours & Co., 279 F.R.D. 331, 336 (D. Md. 2012) (citing Banks v. Realty Mgmt. Serv., No. 10cv14 (JCC/TCB), 2010 WL 420037, at *1 (E.D.Va. Jan. 29, 2010)); (“[W]hen affirmative defenses are stricken, the defendant should normally be granted leave to amend.”); Intellectual Ventures I LLC v. Capital One Fin. Corp., 99 F. Supp. 3d 610, 615 (D. Md. 2015) (“[I]f the underlying facts or circumstances relied upon by a counterclaimant may be a proper subject of relief, and the counterclaimant moves to amend, the Court should

grant the motion so that the counterclaimant has the opportunity to test his claim on the merits.”) (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)) (internal quotation and formatting omitted); Fed. R. Civ. P. 15(a)(2) (with regard to amendments the Court “ should freely give leave when justice so requires.”).

This Motion is being filed well in advance of this Court’s deadline for filing motions to amend the pleadings. It is not being interposed to unduly delay or prejudice the Plaintiffs, and will not do so, as no discovery has taken place at this juncture of the case. Further, the amendments are not futile, and instead are intended to address supposed issues raised by Plaintiffs in their motion to strike and motion to dismiss. For these reasons Defendants respectfully request that the Court grant this Motion and permit Defendants to file the Amended Answer, Defenses, and Counterclaims attached hereto as Exhibit “A”. As is required by L.R. 103.6(c) a markup of the Amended Answer, Defenses, and Counterclaim is attached hereto as Exhibit “B”.

Defendants attempted to contact Plaintiffs requesting their consent to file this Motion but have not been able to make contact. As such, Defendants report that consent from Plaintiffs to this motion has not been obtained, but also has not been denied.

Respectfully submitted this 23rd day of December, 2016.

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**Attorneys for Defendants / Counterclaim
Plaintiffs**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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This 23rd day of December, 2016.

**WOMBLE CARLYLE SANDRIDGE &
RICE, LLP**

/s/ Arthur A. Ebbs
Admitted Pro Hac Vice